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Director, Investigations 2

Anti-Dumping Commission

GPO Box 2013

CANBERRA ACT 2601 AUSTRALIA

Via email: [investigations2@adcommission.gov.au](mailto:investigations2@adcommission.gov.au)

Dear Sir/Madam,

**RE: Statement of Essential Facts (SEF) No. 617**

- **Inquiry into the Continuation of Anti-Dumping Measures on Steel Pallet Racking Exported to Australia from the People's Republic of China and Malaysia**

We refer to the above SEF Report and wish to outline our company's position in relation to certain contents and assumptions contained within your recent report.

## 1. Background

The subject Statement of Essential Facts (SEF) relates to the ADC's inquiry into whether to continue the Anti-Dumping measures on Steel Pallet Racking exported to Australia from the People's Republic of China and Malaysia.

The current measures are in the form of ad-valorem interim dumping duties (IDD's) and apply to exports of the goods to Australia. We note that Schaefer Systems International SDN BHD of Malaysia has an ad-valorem rate of 4.6%, which is being proposed to be continued.

These measures are due to expire on 8 May 2024.

The ADC's SEF provides the facts on which the Commissioner proposes to base recommendations to the Minister for Industry and Science (the Minister).

## 2. Current Recommendations

We understand the Commissioner is currently satisfied that the expiry of the measures on Steel Pallet Racking exported to Australia from the nominated countries would be likely to lead to a continuation and or recurrence of dumping and the material injury that the current measures are intended to prevent.

The findings contained within Report No. 617 are based on the evidence presently available to the ADC.

We believe the Commissioner proposes to recommend that the current measures remain unaltered. Chapters 3 to 8 of the SEF contain the Commissioner's preliminary findings.

Therefore, based on the present evidence, the Commissioner is preliminary satisfied that, in summary:

- exports from China and Malaysia would likely continue if the measures expire.
- dumping by exporters from China and Malaysia would likely continue or recur if the measures expire, and
- material injury to the Australian industry would likely recur if the measures expire.

## 3. Local Industry Injury Elements Assessed

We recognise the Commissioner has assessed the economic condition of the Australian industry from 1 January 2019, in order to analyse trends in the market for Steel Pallet Racking and thereby assess potential injury factors.

The believe the Commissioner has determined that the Australian industry has experienced the following market conditions over the designated injury period:

- decreased its market share
- increased prices at a greater rate than cost increases
- increased profit and profitability
- had fluctuating sales volumes

#### **4. Likelihood of Dumping and Material Injury Continuing or Recurring**

The report also contains the Commissioner's preliminary view that the expiry of the measures would lead, or would be likely to lead, to a continuation or recurrence of the dumping and material injury that the measures are intended to prevent.

The Commissioner has reached this view based on certain factors, including:

- Steel pallet racking continues to be exported from China and Malaysia.
- Chinese and Malaysian exporters have either maintained or are able to re-establish distribution links with Australian importers.
- Chinese and Malaysian exporters have excess capacity, which would provide them with the ability and incentive to continue to supply or recommence supplying the Australian market should the measures expire.
- Trade measures on China in other jurisdictions restrict alternative export markets, making Australia a comparatively more attractive and accessible market for exports from China should the measures expire.
- The original investigation found dumping by all exporters from the subject countries, at margins ranging between 4.6% and 110.3%. There is no evidence before the Commission that dumping has ceased or is not likely to continue in the future (noting that the variable factors were not reviewed).
- No duty assessments have been lodged by importers of goods exported from the subject countries. This is prima facie evidence that the importers did not have a claim to a refund of duties (ie, that the goods were still being exported at dumped prices).
- Price is a major factor in purchasing decisions for Steel Pallet Racking. There is evidence that the Australian industry has lost tenders based on price. It is likely that the Australian industry will come under increased pricing pressure from Chinese and Malaysian exporters if the measures expire.
- If measures were to expire and there were reduced prices from dumped exports, the Australian industry's sales volumes, market share, profits and profitability would likely be reduced.

#### **5. Economic Condition of the Industry**

We note that the Commissioner has assessed the economic condition of the Australian industry from 1 January 2019, in an attempt to analyse trends in the market for steel pallet racking and assess potential injury factors.

The Commissioner has found that the Australian industry has experienced the following economic factors over the foregoing period:

- decreased its market share
- increased prices at a greater rate than cost increases
- increased profit and profitability
- had fluctuating sales volumes

In addition, we note the following salient economic factors that have been confirmed by the Commissioner:-

“As demonstrated below, the commission has found that Dematic and APC Storage have not experienced price depression or price suppression since measures were imposed” (Section 5.5 – Price effects – page 28).

“Based on this analysis, the team considers that Dematic and APC Storage do not appear to have experienced injury in the form of loss of profits or reduced profitability during the period examined” (5.6 - Profits and profitability – page 31).

### **5.1 Import Volumes (Section 6.6.1 - page 35)**

We recite the following comments of the Commissioner:-

“The commission notes there was only a very small volume of exports of the goods from China during the inquiry period. During the same period, **the value of exports from Malaysia was substantially higher than both the Australian industry and exports from countries not subject to the measures.**” .....

“The commission has found that while export volumes from China decreased after measures were imposed, export volumes from Malaysia increased. This is likely attributed to importers switching their source of the goods from China to Malaysia to obtain goods at lower prices due to the higher rate of IDD applied to exports from China than Malaysia.

During importer visits to Dexion Australia and Schaefer Australia, both confirmed that since measures were imposed in 2019, they began sourcing all steel pallet racking from their related suppliers in Malaysia (Dexion Malaysia and Schaefer Malaysia), as the measures on the goods exported from Malaysia were more favourable.”

Whilst we accept the fact that the IDD rates are lower for Malaysian exports, as mentioned during the Verification visit, we believe these sourcing decisions were more related to a ‘flight to quality’ rather than commercial factors, as evidenced by the Commissioner above finding that Malaysian export prices/values are substantially higher than the Australian industry prices.

### **5.2 Excess Production Capacity (6.6.3 - page 36)**

We note the following comments:-

“Dexion Australia stated that it has excess capacity at its related supplier in Malaysia (Dexion Malaysia).<sup>56</sup> Based on unverified data provided in its REQ that was submitted after the legislated period, **it also appears that Schaefer Malaysia may have some excess production capacity.**”

Our Malaysian factory produces quality steel pallet racking for the global market, with an Asian focus, therefore the factory reaches capacity at various times of the year depending on the specialised customer orders being received during the period.

Generally speaking, we do not believe the factory has any continued excess capacity that could be regarded as a threat to the Australian industry, given the historical production volumes whilst Anti-Dumping (AD) duties have been imposed in Australia.

Should these AD duties be removed, we do not envisage any significant increase in volumes for the Australian market, particularly given the factory supplies many countries in the region and beyond.

## **6. Continuation Inquiry Assessments**

We refer to the following commentary from the WTO concerning ‘Sunset Reviews’ or Continuation Inquiries: -

### **“A.3.45 Article 11.3 — Sunset reviews — Conditions.**

*See also Anti-Dumping Agreement, Article 11.4 — Relationship with Article 6 (A.3.53); SCM Agreement, Article 21 (S.2.29–S.2.33).*

*A.3.45.1 US — Corrosion-Resistant Steel Sunset Review, para. 104*

*(WT/DS244/AB/R)*

**Article 11.3 imposes a temporal limitation on the maintenance of Anti-Dumping duties. It lays down a mandatory rule with an exception.**

*Specifically, Members are required to terminate an Anti-Dumping duty within five years of its imposition “unless” the following conditions are satisfied:*

*first, that a review be initiated before the expiry of five years from the date of the imposition of the duty;*

*second, that in the review the authorities determine that the expiry of the duty would be likely to lead to continuation or recurrence of dumping;*

*and third, that in the review the authorities determine that the expiry of the duty would be likely to lead to continuation or recurrence of injury.*

***If any one of these conditions is not satisfied, the duty must be terminated.”***

Based on the Commissioner’s comments in relation to the economic state of the local industry over the period commencing 1 January 2019, “increased prices at a greater rate than cost increases” and “increased profit and profitability” and that “the value of exports from Malaysia was substantially higher than both the Australian industry and exports from countries not subject to the measures.”, it is difficult to confirm that the second and third test elements above have been satisfied for Malaysia.

### **A.3.46 Article 11.3 — Likelihood of continuation or recurrence of dumping**

*A.3.46.1 US — Corrosion-Resistant Steel Sunset Review, para. 105*

*(WT/DS244/AB/R)*

*This appeal concerns ... the particular disciplines with which authorities must comply in determining, in accordance with Article 11.3, “that the expiry of the duty would be likely to lead to continuation or recurrence of dumping”. In this Report, we refer to this determination as the “likelihood determination”. The likelihood determination is a prospective determination. In other words, the authorities must undertake a forward-looking analysis and seek to resolve the issue of what would be likely to occur if the duty were terminated.*

*A.3.46.2 US — Corrosion-Resistant Steel Sunset Review, para. 107*

*(WT/DS244/AB/R)*

*... In an original Anti-Dumping investigation, investigating authorities must determine whether dumping exists during the period of investigation. In contrast, in a sunset review of an Anti-Dumping duty, investigating authorities must determine whether the expiry of the duty that was imposed at the conclusion of an original investigation would be likely to lead to continuation or recurrence of dumping.*

*A.3.46.3 US — Oil Country Tubular Goods Sunset Reviews, para. 323*

*(WT/DS268/AB/R)*

*Under Article 11.3 of the Anti-Dumping Agreement, a decision not to terminate an Anti-Dumping duty must be based on determinations of likelihood of continuation or recurrence of dumping and likelihood of continuation or recurrence of injury. We agree with the United States that the “likely” standard of Article 11.3 applies to the overall determinations regarding dumping and injury; it need not necessarily apply to each factor considered in rendering the overall determinations on dumping and injury.*

*A.3.46.4 US — Anti-Dumping Measures on Oil Country Tubular Goods, para. 108*

*(WT/DS282/AB/R)*

*On its face, Article 11.3 does not require investigating authorities to establish the existence of a “causal link” between likely dumping and likely injury. Instead, by its terms, Article 11.3 requires investigating authorities to determine whether the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. Thus, in order to continue the duty, there must be a nexus between the “expiry of the duty”, on the one hand, and “continuation or recurrence of dumping and injury”, on the other hand, such that the former “would be likely to lead to” the latter. This nexus must be clearly demonstrated. ...*

*A.3.47.2 US — Oil Country Tubular Goods Sunset Reviews, para. 309*

*(WT/DS268/AB/R)*

*The Panel stated that the standard set out in Article 11.3 is the “likely” standard; this is plain from the text of the provision itself. Although the Panel did not elaborate with respect to the meaning of “likely”, or expressly state that “likely” means “probable”,*

*we see nothing in the Panel Report to suggest that the Panel was of the view that “likely” does not mean “probable”, or that “likely” means “anything less than probable”.*

*A.3.52B.2 US — Oil Country Tubular Goods Sunset Reviews, paras. 283–284  
(WT/DS268/AB/R)*

*We are not persuaded by the argument of Argentina that a likelihood-of-injury determination can rest on a “sufficient factual basis” and can be regarded as a “reasoned conclusion” only after undertaking all the analyses detailed in the paragraphs of Article 3.*

*This is not to say, however, that in a sunset review determination, an investigating authority is never required to examine any of the factors listed in the paragraphs of Article 3. Certain of the analyses mandated by Article 3 and necessarily relevant in an original investigation may prove to be probative, or possibly even required, in order for an investigating authority in a sunset review to arrive at a “reasoned conclusion”. In this respect, we are of the view that the fundamental requirement of Article 3.1 that an injury determination be based on “positive evidence” and an “objective examination” would be equally relevant to likelihood determinations under Article 11.3. It seems to us that factors such as the volume, price effects, and the impact on the domestic industry of dumped imports, taking into account the conditions of competition, may be relevant to varying degrees in a given likelihood-of-injury determination. An investigating authority may also, in its own judgement, consider other factors contained in Article 3 when making a likelihood-of-injury determination. But the necessity of conducting such an analysis in a given case results from the requirement imposed by Article 11.3 — not Article 3 — that a likelihood-of-injury determination rest on a “sufficient factual basis” that allows the agency to draw “reasoned and adequate conclusions”.*

We reiterate that given the findings of the Commissioner in relation to the current economic state of the local industry and the following factual issue concerning the market in Australia: -

*“In REP 441, the commission also noted that, even at its full capacity, the Australian industry is not able to fully supply the entire volume of the Australian steel pallet racking market, and therefore importations of the goods from China and Malaysia are likely to continue.”*

Hence, even if measures were terminated, the market needs to be serviced by imports, particularly from Malaysia, which has demonstrated over the respective period that it is prepared to export at prices higher than the domestic supply prices, even with dumping duties being applied.

Based on the foregoing WTO Sunset commentary and jurisprudence, we believe the following is relevant to our assertion that there will not be a reoccurrence of injury should the measures be terminated against Malaysian exports: -

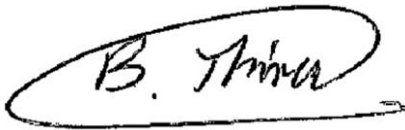


*“that a likelihood-of-injury determination rest on a “sufficient factual basis” that allows the agency to draw “reasoned and adequate conclusions”.*

In summary, given the current positive economic factors involving the local industry whilst supplies of Malaysian exports of steel pallet racking have occurred, there doesn't appear to be a 'sufficient factual basis' to continue the current measures, particularly given the relatively low dumping margin of 4.6% (Schaefer Systems International SDN. BHD) and 'Other Exporters' at 4.8%, that have applied over the past 4.5 years.

Please do not hesitate to contact the undersigned if you require any further information or assistance.

Regards,



Brett Thirup  
Managing Director

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